

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

In Re: Defendant Auris Health, Inc.’s
Subpoena to Covidien LP

Case No. _____
ORAL HEARING REQUESTED

INTUITIVE SURGICAL, INC. AND
INTUITIVE SURGICAL OPERATIONS,
INC.,

D. Del. C.A. No. 18-1359-MN

Plaintiffs,

v.

AURIS HEALTH, INC.,

Defendant.

**DEFENDANT’S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA TO
THIRD-PARTY COVIDIEN**

Pursuant to Federal Rules of Civil Procedure 37 and 45 and District of Massachusetts Local Rule 37.1, Defendant Auris Health, Inc. (“Auris”) respectfully requests that the Court enter an order compelling third party Covidien LP (“Covidien”) to provide a knowledgeable witness for deposition pursuant to a subpoena issued from the District of Delaware in connection with an action pending in that District, *Intuitive Surgical, Inc., et al. v. Auris Health, Inc.*, Case No. 18-1359-MN (D. Del. Aug. 31, 2018).

By this Motion, Auris makes a narrowly-tailored request for an order compelling Covidien to provide a witness for a short deposition, to be taken remotely, limited to four distinct topics: (1) the authenticity and business records status of documents produced by Covidien; (2) the date of first sale or first public use of the “superDimension” system described in the produced documents; (3) confirmation that the produced documents accurately characterize the superDimension system

as-sold; and (4) the operation and functionality of certain “navigation software” used with the superDimension system.

In support of this Motion, Auris relies on the Memorandum of Law and the Declaration of Brian D. Matty, including attached exhibits, submitted herewith.

Dated: April 24, 2020

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REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Auris respectfully requests that the Court hold oral argument on this motion.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)

The undersigned hereby certifies that counsel for Auris conferred with counsel for third-party Covidien and attempted in good faith to resolve or narrow the issues in dispute, but was unable to do so.

/s/ Jack W. Pirozzolo

Jack W. Pirozzolo

Counsel for Defendant Auris Health, Inc.

CERTIFICATE PURSUANT TO LOCAL RULE 37.1

The undersigned hereby certifies that counsel for Auris has complied with the provisions of Local Rule 37.1.

/s/ Jack W. Pirozzolo

Jack W. Pirozzolo

Counsel for Defendant Auris Health, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and accompanying memorandum, declaration, and exhibits have been filed via the Court's CM/ECF system, and a copy of this Motion and accompanying documents has been sent by email to counsel for Covidien and Intuitive.

/s/ Jack W. Pirozzolo

Jack W. Pirozzolo

Counsel for Defendant Auris Health, Inc.